

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1089 Construction Contracting
SPONSOR(S): Galvano
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Blalock	Bond
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

A statute of limitations establishes a fixed time period within which a lawsuit must be commenced after a cause of action has accrued.

This bill reduces the 4-year statute of limitations for actions founded on the design, planning, or construction of an improvement to real property, with the time running from the earliest (instead of the latest) occurrence of specified events. However, the 4-year statute will not start to run as to a latent defect until the defect is discovered or should have been discovered by the owner. This bill also reduces the absolute time limit for commencing an action on the design, planning, or construction of an improvement to real property from 15 years to 10 years with the time running from the earliest (instead of latest) occurrence of specified events.

This bill provides that converter reserve accounts and warranties only apply to the conversion of existing improvements where construction of the improvement was commenced prior to its designation by the developer as a condominium.

This bill provides that the reductions to the length of the statute of limitations in this bill apply to any action commenced on or after July 1, 2006, regardless of when the cause of action accrued. There is an exception providing that any action that would not have been barred prior to the changes made by this bill can be commenced before July 1, 2007. If the action is not commenced by this date and is barred by the changes made to the statute of limitations and repose in this bill, then it will be barred.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill reduces the length of the statute of limitations and repose for actions founded on the design, planning, or construction of an improvement to real property.

Promotes personal responsibility -- This bill requires that litigants commence their cause of action in a more timely fashion from when the cause of action has accrued.

B. EFFECT OF PROPOSED CHANGES:

Background

Limitations Other Than for the Recovery of Real Property

A statute of limitations establishes a fixed time period within which lawsuits must be commenced after a cause of action has accrued.¹ Once a claim has been extinguished by the applicable statute of limitations, the claim cannot be revived because a constitutionally protected property right to be free from the claim has vested in the defendant.² At common law, there is no fixed time limit for filing a lawsuit, however, the common law does follow the doctrine of laches. The doctrine of laches is the legal doctrine that a legal right or claim will not be enforced or allowed if a long delay in asserting the right or claim has prejudiced the adverse party. The legislature codified the common law theory of laches in statutes of limitations so that the courts would apply the doctrine of laches uniformly and not just at their discretion. The statutes of limitation are primarily governed by ch. 95, F.S., although statutes of limitation are found in other parts of the statutes as well.

Statutes of limitation are based on public policy,³ and are designed to encourage plaintiffs to assert their causes of action with reasonable diligence when evidence is fresh and available.⁴ Statutes of limitation protect defendants against claims asserted when evidence is lost and after the facts have become obscure from the lapse of time, defective memory, or death and removal of witnesses.⁵

Section 95.11(3)(c), F.S. currently provides that actions founded on a deficiency in the design, planning, or construction of an improvement to real property, whether founded on contract or on negligence,⁶ are subject to a 4-year statute of limitations. The 4-year time period of the statute of limitations begins to run from the latest date of the following events:

- Actual possession by the owner;
- The issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

¹ Am. Jur. 2d, Limitation of Actions § 9.

² *Wood v. Eli Lilly & Co.*, 701 So. 2d 344 (Fla. 1997); *In re Estate of Smith*, 685 So. 2d 1206 (Fla. 1996); *Boyce v. Cluett*, 672 So. 2d 858 (Fla. 4th DCA 1996).

³ *Florida Dept. of Health and Rehabilitative Services v. S.A.P.*, 835 So. 2d 1091 (Fla. 2002); *Major League Baseball v. Morsani*, 790 So. 2d 1071 (Fla. 2001).

⁴ *Thermo Air Contractors, Inc. v. Travelers Indem. Co.*, 277 So. 2d 47 (Fla. 3rd DCA 1973); *Foremost Properties, Inc. v. Gladman*, 100 So. 2d 669 (Fla. 1st DCA 1958).

⁵ *Whaley v. Wotring*, 225 So. 2d 177 (Fla. Dist. Ct. App. 1st Dist. 1969).

⁶ *Dubin v. Dow Corning Corp.*, 478 So. 2d 71 (Fla. 2nd DCA 1985).

An exception to the 4-year statute of limitations is provided for when an action involves a latent defect. A latent defect is a hidden flaw, weakness or imperfection in an article which a seller knows about, but the buyer cannot discover by a reasonable inspection. Under these circumstances the 4-year statute of limitation begins to run from the time the defect is discovered or should have been discovered through due diligence. In either circumstance, the action must be commenced within 15 years after the date of the following, whichever is earliest:

- Date of actual possession by the owner;
- The date of the issuance of a certificate of occupancy;
- The date of abandonment of construction if not completed; or
- The date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

Warranties by Contractors, Subcontractors, and Suppliers to the Developer and Unit Owners

Section 718.203, F.S. provides that the contractor, subcontractors, and suppliers grant to the developer and to the purchaser of each unit an implied warranty of fitness as to the work performed or materials supplied by them.⁷ Specifically, there is an implied warranty of fitness for three years from the completion of the construction of a building or improvement as to the roof and structural components of the building or improvement and as to mechanical and plumbing elements serving a building or an improvement, except for mechanical elements serving only one unit.⁸ As to all other improvements and materials, there is an implied warranty of fitness for one year after all construction is completed.⁹ In order to comply with the implied warranty of fitness, the contractor must provide work and materials that conform to the generally accepted standards of workmanship and performance of similar work and materials meeting the requirements specified in the contract.¹⁰

Warranties by the developer and warranties by contractors inure to the benefit of each owner and his or her successor owners and to the benefit of the developer.¹¹ They are conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.¹² Such provisions do not affect a condominium or cooperative as to which rights are established by contracts for sale of 10% or more of the units in the condominium or cooperative by the developer to prospective unit owners prior to July 1, 1974, or as to condominium or cooperative buildings on which construction has been commenced prior to July 1, 1974.¹³

Converter Reserve Accounts: Warranties

By complying with the general provisions regarding condominiums, a developer may create a condominium by converting existing, previously occupied improvements to condominium ownership. Prior to or simultaneous with the first offering of individual units to any person, each developer must deliver a notice of intended conversion to all the tenants of the existing improvements being converted to a residential condominium or residential cooperative. All such notices must be given within a 72-hour period.¹⁴ The developer is also required to distribute certain economic information to tenants having a right of first refusal.¹⁵ Furthermore, the developer must disclose the condition of the improvements and certain components, as well as the current estimated replacement costs.¹⁶

⁷ Section 718.203(2), F.S.

⁸ Section 718.203(2)(a), F.S.

⁹ Section 718.203(2)(b), F.S.

¹⁰ *Leisure Resorts, Inc. v. Frank J. Rooney, Inc.*, 654 So. 2d 911, 20 Fla. L. Weekly S184 (Fla. 1995)

¹¹ Section 718.203(5), F.S.

¹² Section 718.203(4), F.S.

¹³ Section 718.203(6), F.S.

¹⁴ Section 718.608(1), F.S.

¹⁵ Section 718.614(1), (2), F.S.

¹⁶ Section 718.614(1), (2), F.S.

When existing improvements are converted to ownership as a residential condominium each residential tenant who has resided in the existing improvements for at least the 180 days preceding the date of the written notice of intended conversion has the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 270 days after the date of the notice. If the rental agreement expires more than 270 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.¹⁷ Each other residential tenant has the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 180 days after the date of the written notice of intended conversion. If the rental agreement expires more than 180 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.¹⁸

Each tenant, who for the 180 days preceding a notice of intended conversion has been a residential tenant of the existing improvements, has the right of first refusal to purchase the unit in which he or she resides on the date of the notice, under the following terms and conditions:¹⁹

- Within 90 days following the written notice of the intended conversion, the developer must deliver to the tenant certain purchase materials;²⁰
- The tenant has the right of first refusal to purchase the unit for a period of not less than 45 days after mailing or personal delivery of the purchase materials; and²¹
- if, after any right of first refusal has expired, the developer offers the unit at a price lower than that offered to the tenant, the developer must in writing notify the tenant prior to the publication of the offer.²²

Section 718.618, F.S. provides that when existing improvements are converted to ownership as a residential condominium, the developer must establish reserve accounts for capital expenditures and deferred maintenance. When the existing improvements include an air-conditioning system serving more than one unit or property, which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account.²³ The developer must fund a plumbing reserve account²⁴ and a roof reserve account²⁵. The developer must also establish other reserve accounts as required by s. 718.112(2)(f), F.S.^{26 27}

Effect of Bill

Limitations Other than for the Recovery of Real Property

This bill amends s. 95.11(3)(c), F.S., to provide that the 4-year time period of the statute of limitations begins to run from the "earliest" of the following events (except when the action involves a latent defect):

- Actual possession by the owner;
- The issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or

¹⁷ Section 718.606(1)(a), F.S.

¹⁸ Section 718.606(1)(b), F.S.

¹⁹ Section 718.612(1), F.S.

²⁰ Section 718.612(1)(a), F.S.

²¹ Section 718.612(1)(b), F.S.

²² Section 718.612(1)(c), F.S.

²³ Section 718.618(1)(a)1, F.S.

²⁴ Section 718.618(1)(a)2, F.S.

²⁵ Section 718.618(1)(a)3, F.S.

²⁶ Section 718.618(1)(d), F.S.

²⁷ Section 718.112(2)(f), F.S. requires reserve accounts for "roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000".

- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

This bill also provides that whatever the circumstances, an action founded on the design, planning, or construction of an improvement to real property must be commenced within 10 years after the date of actual possession by the owner, the date of issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the engineer, architect, or contractor and his or her employer, whichever date is "earliest"

Warranties by Contractors, Subcontractors, and Suppliers to the Developer and Unit Owners

This bill amends s. 720.203(2), F.S., to provide that the implied warranties that the contractor, subcontractors, and suppliers grant to the developer only pertain to the work performed or materials supplied by them that are specified in their respective contracts and any amendments to those contracts. This bill also amends s. 718.203(6), F.S., to provide that the warranty provided in s. 718.203(2), F.S. applies only to a building or improvement that was designated as a condominium by the developer in its construction contract with the contractor or any amendment to the contract executed by the parties. This bill removes the language in current law which provides that nothing in this section affects condominiums where rights are established by contracts for the sale of 10% or more of the units in the condominium by the developer to prospective unit owners prior to July 1, 1974, or as to condominium buildings where construction has been commenced prior to July 1, 1974.

Converter Reserve Accounts; Warranties

This bill amends s. 718.618, F.S., creating subsection (9), which provides that section s. 718.618, F.S. applies only to the conversion of existing improvements where construction of the improvement was commenced prior to its designation by the developer as a condominium. Where these circumstances do occur, s. 718.203 (providing that the developer is deemed to have granted to each unit owner an implied warranty of fitness and merchantability) does not apply. Therefore, reserve accounts will only have to be established for the purposes of conversion, where construction of the improvement started before it was designated as a condominium. Under these circumstances, the developer is not deemed to have granted a unit owner an implied warranty of fitness and merchantability.

Application of the Proposed Changes to s. 95.11(3)(c), F.S.

This bill provides that the proposed changes made by the bill to s. 95.11(3)(c), F.S. will apply to any action commenced on or after July 1, 2006, regardless of when the cause of action accrued. The changes made by this bill, shortening the statute of limitations for actions founded on the design, planning, or construction of an improvement to real property, would apply to any party whose action commenced on or after July 1, 2006, even if the cause of action accrued much earlier. Therefore, a party whose cause of action accrued prior to the changes in this bill, but the action commenced after July 1, 2006, could be barred from bringing the action by the shortening of the statute of repose from 15 years to 10 years. This bill does provide an exception, which deals with this issue, and provides that any action that would not have been barred under s. 95.11(3)(c), F.S., prior to the amendments made by this act may be commenced before July 1, 2007. If the action is not commenced by July 1, 2007 and is barred by the amendments to s. 95.11(3)(c), F.S., then the action will be barred. Therefore, people who would be barred from bringing a cause of action based on the new statute of limitations and repose, but not under the old statute have until July 1, 2007 to commence their cause of action or are forever barred. Some constitutional questions may be raised concerning this section of the bill, however, these provisions are not unconstitutional (see constitutional issues section below).

C. SECTION DIRECTORY:

Section 1 amends s. 95.11(3)(c), F.S., shortening the statute of limitations and repose for actions founded on the design, planning, or construction of an improvement of real property.

Section 2 amends s. 718.203, F.S., to revise provisions related to when contractors, subcontractors, and suppliers must grant implied warranties of fitness to the developer and unit owners.

Section 3 amends s. 718.618(9), F.S., to provide for when provisions related to conversion reserve accounts and warranties are applicable.

Section 4 establishes specific provisions pertaining to the application of the changes to s. 95.11(3)(c), F.S. in this bill.

Section 5 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Although the right to commence an action is a valid and protected property interest,²⁸ a plaintiff has no vested right in a statute of limitations in effect when his or her cause of action accrues.²⁹ Thus, the time allowed for a suit may be either initially imposed or reduced by legislation enacted after the

²⁸ *Wiley v. Roof*, 641 So. 2d 66 (Fla. 1994).

²⁹ *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).

cause of action arose, provided the litigant still has a reasonable time left in which to enforce his or her right.³⁰ The changes to s. 95.11(3)(c), F.S., made in this bill does reduce the time allowed for a suit, after the cause of action arose, but the bill appears to give a litigant reasonable time to enforce his or her right before being completely barred.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

³⁰ McCloskey & Co. v. Eckart, 164 F.2d 257 (C.C.A. 5th Cir. 1947); Walter Denson & Son v. Nelson, 88 So. 2d 120 (Fla. 1956).